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REPORT OF THE WORKING CONFERENCE ON THE "CHARTER OF RIGHTS AND FREEDOMS: IMPLICATIONS FOR HUMAN SERVICES" HELD ON APRIL 19, 1985 AT PARK PLAZA HOTEL TORONTO, ONTARIO

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FORWARD

By **Livy Visano, Conference Chairperson**

"Moving Beyond Legal Paradoxes Towards Social Action"

The Charter of Rights has generated considerable critical thought. As a potentially progressive document, the Charter is caught in a contradictory position. Implicit in the Charter is the commitment to humanistic values, such as equality and freedom. And yet the context in which the Charter is located remains within the traditions of legal paternalism. The area of human services is a fertile territory that can be used to chart greater sensitivities, a new social vision about legal protections.

The discussions presented in this report represent controversial statements, not only because they directly and disturbingly question the impact of the Charter. More significantly, they locate and amplify new possibilities and implications previously left buried or invisible; for example, suggesting a number of moral imperatives concerning the inclusion of stakeholders who traditionally have been socially disenfranchised. The Charter is a celebration not only because of the bonanza it affords the legal profession; indeed, it is a guidepost for change precisely because a number of previously excluded constitutents have become participants in legal discourses and legal action. Providers and recipients of human services have become implicated directly in assessing the impact of the Charter. We have moved beyond rhetorical pronouncements and beyond the particularly well groomed and articulate spokespersons within a few privileged professions to include the disadvantaged. Regrettably, the

latter group has been historically dismissed in many deliberations about the actual implementation of the Charter. This report is an expression of a prevailing commitment to those for whom the Charter has real consequences.

Much more work needs to be done. The Charter simply opens up a discussion of equality in the sphere of human service delivery initiatives, but the plight of these services is borne out again and again. Social reform has remained on a limited and piece-meal level. The core problem is to grasp the possibilities for concerted action framed by our understanding of the needs peculiar to social and economic conditions. The Charter is presented as a practical concern: it is our conviction that it must be tested in real practice and applied to the realities of human services programs. A consciousness of the Charter's full potential will serve to demystify its legal fantasies and emphasize advocacy and applications of equality. Admittedly, this is a challenge, given the tendency to atrophy legal reasoning and actual application. The Charter is not only the object of well-intentioned abstractions, but in a very real sense a guide to action, a unity of legal theory and practice.

It is commonplace for us to admit that the Charter presents new challenges. It is, however, incumbent upon us as individuals and groups to ensure that equality is fully embraced, to influence legal trends and, more importantly, to realize the potential of the Charter in our routine applications. Unless both a collective conscience develops and a mobilization of interests occurs, the Charter will be of dubious value to human services.

INTRODUCTION

CONFERENCE OBJECTIVES

In September, 1984, the Board of Directors of the Social Planning Council approved a program proposal entitled 'Conference on the Charter of Rights and Freedoms: Implications for Social Policy and Services'.

The conference was to be the first of its kind to look at the effects of the Charter of Rights and Freedoms on legal and equality rights as they impact upon human services in Canada. The objectives for the conference were:

1. To become more informed about the provisions of the Charter of Rights and Freedoms.
2. To determine arguments for a broader interpretation of the Charter as it relates to social policy and services.
3. To identify community strategies for changing the Charter to these ends.

A conference planning committee was struck, including members of the Social Planning Board of Directors: Lin Grist, Monica Armour, Dan McIntyre, and Livy Visano - the conference chairperson. External members included David Baker of the Advocacy Resource Centre for the Handicapped; Joanne Leatch from the Ministry of Community and Social Services; Maryka Omatsu, Affirmative Action Consultant for Employment and Immigration Canada; Mary Bruce, Director, Equal Opportunity Division, City of Toronto; Professor Allan Hutchinson from Osgoode Hall Law School; and John Harding of the Metropolitan Toronto Association for the Mentally Retarded. SPC staff included Dr. Robert Doyle, conference co-ordinator, with assistance provided by Suzanne Olsen, Ryerson field placement student.

THE PROCESS

The committee met eight times between October 1984 and April 1985. It was decided that this should be a working conference where participants would be expected to contribute actively to discussions. It was also planned that follow-up activity would take place from the conference, which was seen only as a first, but important, step in exploring the potential of the Charter of Rights and Freedoms for advancing social development in Canada.

The planning committee chose to target three groups of potential participants: service providers, community organizations, and the legal profession. Morning working sessions were focused on these target groups, with one session dealing with general legal and equality rights. The emphasis was on determining whether the Charter works for these groups. In the afternoon, registants were assigned randomly to one of five working sessions dealing with strategies for collaboration around Charter issues. The Conference program is attached. It lists the focus of plenary meetings and the working sessions.

SPONSORSHIP AND FUNDING

The Conference was held in association with the Canadian Council on Social Development. CCSD has been involved in promoting awareness of the Charter's potential for social change and development. It has recently accepted responsibility for the Court Challenges Program which relates to the equality provisions of the Charter and provides funds for challenges to government policy.

Funding assistance was received from three levels of government, and is greatfully acknowledged as a major factor in the success of the conference:

- The Human Rights Directorate, Secretary of State, the Government of Canada

- The Provincial Secretariat for Social Development, the Government of Ontario

- The City of Toronto

OPENING REMARKS

WELCOME TO THE CONFERENCE

Mrs. Judy Jordan-Austin
President
Social Planning Council
of Metropolitan Toronto

Mrs. Jordan-Austin welcomed the participants to the Conference on behalf of the co sponsors. She noted the timeliness of the event in that only two days previously, Section 15 (Equality Rights) of the Charter came into effect. She thanked the financial contributors - the Human Rights Directorate (Secretary of State); the Provincial Secretariat for Justice; the City of Toronto. She noted that a conference report would be produced, and that it should be a valuable document to assist other communities to consider how the Charter relates to human services.

CHAIRPERSON'S INTRODUCTION

Livy Visano, Chairperson
Social Planning Council
of Metropolitan Toronto
Board Member

Livy Visano noted that the conference is the culmination of a six-month planning process, with the collaboration of the Canadian Council on Social Development. He emphasized that this was a working conference, and that while people had different levels of knowledge, information and involvement regarding Charter-based issues, we all share a common concern to ensure that the Charter protects and extends our rights. The addition only recently of Section 15 means that our full rights are not in place, and the Charter has the potential to

impact our lives -- but the jury is out as to whether it will be an instrument for social justice, to further our legal and democratic rights. How it is interpreted by the Courts is critical. Will it be necessary to litigate, or can our rights be ensured without costly and time-consuming litigation? Will the charter be a bonanza for the legal community and a bust for the poor and disadvantaged, who can ill afford costly litigation and lack resources to negotiate the ways in which tney can exercise their full rights? He noted Section 7, dealing with "life, liberty and the security of the person" and "equality before the law and under the law" as important to consider in viewing whether people have rights to services such as health and housing. He stressed that it is incumbent on all of us to monitor what is happening in Charter cases and to see how the provisions are being put into practice.

COMMENTS ON THE PROCESS OF THE CONFERENCE

Dan McIntyre
Member of the Planning Committee and
Executive Director of the Ontario Region,
Canadian Human Rights Commission*

*** recently appointed Race Relations Commissioner for Ontario**

Mr. McIntyre stressed the action orientation of the conference, and that we should look to develop specific strategies and action plans to deal with the information provided. There is a need to specify concrete steps to turn what is now a legal document into an instrument for social change and social justice. Everyone should ask themselves what they and their group can do to co-ordinate their efforts. He noted the need to consider ways to share information and co-ordinate resources and test cases.

HIGHLIGHTS OF THE KEYNOTE ADDRESS

David Kairys
Kairys and Rudovsky
Philadelphia, Pennsylvania

Mr. Kairys discussed experiences dealing with the American Bill of Rights, which may have some application in Canada.

He discussed legal decision-making in socially important cases, noting misconceptions about how cases get decided and why they get decided in the way they do. The law is seen by many people as flexible and manipulable, with the general feeling that "there's a right answer" - some sort of rule or law which a fair-minded person can apply and come up with a result. He contended that there is really no correct answer in the law on almost any question where the legal process or legal method requires a specific result or where there is a specific result.

In view of the nature of the law, he cautioned participants to question how much they want to legalize the interests and goals of their groups.

He cited the case of **HUDGINS vs NLRB** on the question of whether one has the right to picket or leaflet in a private shopping centre, which dealt with freedom of expression. He stated that there has been a tendency on the part of other groups to use the **HUDGINS vs NLRB** judgement as a precedent for all kinds of questions, but that it did not resolve the 'broad' question of the right to freely express oneself on private property. There is nothing in the law which required the judge to come to a decision, which depends on the context and is based on social, political and moral values. The law provides a

'stylized rationalization' for particular results without telling the courts what to do in any particular case.

In the U.S., Congress enacted the First Amendment as a free speech guarantee. After the Civil War, the Fourteenth Amendment provided that no state could deny equal protection or due process of law. These guarantees did not apply to the private sector.

He noted that the Theory of Legal Realism, originated in the 1920's, has been reincarnated as Critical Legal Theory which removes the decision by judges from the social, political and moral values applying to issues in society. This was one view of the law. He gave an example regarding the importance of context in legal decisions and that the meaning of the law is affected by social and political forces -- the arrest in 1897 of a Reverend William Davis, preaching the social gospel in the Boston Common, handing out social tracts. The Supreme Court confirmed the conviction on the basis that the Mayor had control over the park, analogous to the control that a private person has in his own living room.

In that same period, other theories characterized the law of free speech at the beginning of the American Constitution. The Bad Tendency Doctrine said that any speech or writing could be prohibited by the State or Federal authorities if it had the possible tendency somewhere in the future to 'cause something bad'. Since intent was one requirement for a crime, they adopted the Constructive Intent Rule - the law would presume when you did something that had a bad tendency, that was what you meant to do.

He cited the experiences of Margaret Sanger and Emma Goldman,

regarding their arrests as they toured the US in the early 1900's and spoke about birth control information, as examples of 'progressive' people who were constantly challenging the denial of free speech, wanting to get their message across and also felt that society should operate in an open manner. Guarantees of free speech, which overruled the three doctrines above came only in the late 1930's in the **HAIG vs CIO** case. A successful suit brought by the CIO stated that the streets were held 'in trust for the people,' and contrary to the doctrines above. The judgement, however, was couched in natural law terms, with the impression that it had always been this way. There was no mention of the struggles which had taken place to secure the guarantees, and that these rights were almost like a gift from the law - that is, the law made these things happen!

The Civil Rights Movement was a time in which there was an enlargement of free speech rights in the US, when disadvantaged people won the Constitutional battle for the ability to express themselves and get their message across.

On the other hand, Mr. Kairys cautioned that written guarantees in the law don't always guarantee rights. "They have no determinant, required meaning and can be turned around to say the very opposite of what you believe is correct. Constitutional guarantees are meant to protect the ordinary citizen without power or money, and provide them with a vehicle to be heard by society-at-large (which may have kept them down). Recently, however, protections to corporations are being increased while they have lessened for ordinary citizens.

He discussed relationships between lawyers and community groups, and

told participants to watch out for the tendency of lawyers to assume too much power within groups they work with. When groups decide to litigate, there is an assumption that lawyers will 'take care of it' and the courts will 'do justice'. Group members look to lawyers for answers, and there is a debilitating effect in the group as members defer to lawyers and lose control over the process. He emphasized the need to use all available resources effectively - both people and money. He cautioned against holding beliefs that lawyers do everything or do nothing, and to remember that the law does not have a required result.

He noted that while there is a tendency for law suits to lend legitimacy to issues, there may be a positive effect even when you lose as attention is brought to an important issue.

COMMENTARY ON THE KEYNOTE ADDRESS

Mary Eberts
Tory, Tory, Deslauriers and Binnington

Ms. Eberts confirmed Mr. Kairys' observations concerning the derivation of law in the Canadian context - that the law is seen as coming from the 'learned justice'.

She cited the famous **PERSONS** case of the 1920 - 30's. A judgement at that time stated that women were not 'persons' and, therefore, could not sit in the Senate; an appeal to the Privy Council affirmed that they were in fact 'persons'. She noted that the constitution was interpreted more liberally in this latter decision.

She saw the Charter as providing the opportunity to contribute to

reform, and that its principles could be used for social justice. She discussed the 'man in the house' rule, a policy followed by some welfare authorities who deny welfare to sole-support women where a man lives in the house, presumably within a sexual relationship.

The constitutionality of this practice will be challenged by the Legal Education and Action Fund (LEAF), filed on behalf of a woman in Ontario - in effect moving to challenge the validity of the rule, not simply its application. The case was seen as similar to that of the **HUDGINS vs CIO** case in the US where you could argue for a broad or narrow definition, each having its limitations and possibilities. She felt that there is an opportunity under the Charter to challenge the nature of laws, not just their application - whether rights are in keeping as expressions of our social values - an elaboration of values and opportunity.

She stressed the need to co-ordinate cases to avoid repetition, and that we need to build our experiences in order to articulate legal values over time. Judges will need to be educated in issues where they now have no experience and only dubious competence. There needs to be co-ordination between lawyers and lay people as these issues are fought. There is a need for both litigation and lobbying, and a constant interplay between the courts and legislatures. We need legislative reform to be considered as much as we need to litigate.

Cases dealing with parole, immigration and refugees, and welfare were noted as ones where legal or procedural rights are being considered. Section 15 is a key to a number of issues dealing with distributive effects of programs, i.e., are programs distributing benefits

differently to people in the same need? However, as Mr. Kairys noted, we need to be concerned that the solution will not be withdrawal of benefits for everyone rather than extension of benefits to those denied them.

She noted that we should consider Section 36 of the Constitution to appeal for greater rights around equal opportunities, reduction of disparities and opportunities, and provision of essential services for all Canadians. Whereas Section 36 may not be amenable to enforcement by bringing governments to court, we may be able to appeal to governments' interest by inviting them to recollect the promise of Section 36 as a statement of principle for the welfare of Canadians.

LUNCHEON HOSTED BY THE PROVINCIAL SECRETARY FOR JUSTICE

COMMENTS BY STEPHANIE WYCHOWANEC,
DEPUTY SECRETARY FOR JUSTICE,
GOVERNMENT OF ONTARIO

Ms. Wychowanec brought greetings from the Province of Ontario to the conference, especially from the Honourable Reuben Baetz, Provincial Secretary for Justice who is extremely interested in the issues being considered by the participants.

She outlined the responsibilities of the Secretariat dealing with communication about the law and the Secretariat's experience with the law. Enshrined in our legal heritage, the law belongs to the people, not simply to the legal and paralegal professionals, to the judiciary and the police. In recent years, tangible expression to this view was shown by sponsoring Community Justice Week, which provides an opportunity for community initiatives in public legal education, for stimulating public education and awareness of the justice system and key justice issues. Many communities have undertaken special events in recognition of Justice Week and its theme 'Justice and Youth: A Community Challenge' - special displays, lectures and workshops, seminars, open houses involving the courts, correctional facilities and community agencies in the justice field. It is also linked with Law Day, a national day of legal information and education sponsored by the Canadian Bar Association. This year it celebrates the third anniversary of the proclamation of the Charter of Rights and Freedoms. It is particularly fitting for all of us concerned with social justice to encourage all citizens to consider the impact of the charter on society. Part of the message of Community Justice Week is to

encourage young people to understand their rights and responsibilities under the law. It holds similar challenges for all involved in the human services, and she congratulated the conference planning committee for their foresight in picking up on this challenge and providing an opportunity to explore some practical ways on how the Charter will affect the human services.

LUNCHEON ADDRESS- THE HONOURABLE JEAN CHRETIEN, M.P., P.C.

Mr. Chretien remarked that this week, as Section 15 Equality Rights comes into effect, is an occasion to celebrate. It was 118 years ago that Canada became a free and separate nation. Three years ago, when the Constitution was passed, Canada, while still free became fully sovereign. He felt that because the working out of the constitution was a novel experience in democracy, the foundation of the nation rests on a new footing - each individual is equal to the next, entitled to the same advantages and protection, confident that if rights are denied, the courts will correct injustices.

The Constitution is committed to guarantee equal opportunities and rights, for which until three years ago, there was no protection in statutes and documents. In 1867 the BNA Act was passed, more as a contract than a constitution. It established institutions such as parliament and the courts, divided powers, and provided guidance regarding democratic functions such as holding elections. It was more a manual of reponsible government, did not mention people, and gave no fundamental guidance for people. The Fathers of Confederation either were not prepared to include the rights of people ýs institutions, or believed it unnecessary. They were sadly mistaken that people were

not above meanness and bigotry, and there was an idyllic notion that guarantees of human rights were not needed. He noted examples in Canadian history where minorities were oppressed, e.g., Japanese-Canadians, and intolerance and elitism which most Canadians now find unacceptable.

On the other hand, there have been some landmark cases in the courts, including countering religious discrimination, and the **DRYBONES** case, which showed the willingness of the courts to protect fundamental freedoms. Also there has been a long procession of champions in parliament, including Tommy Douglas and John Diefenbaker (1960 Bill of Rights). The Bill of Rights, laudable in spirit, tended to pit provincial and federal laws against one another, and was fraught with loopholes and inadequacies. The courts said that politicians must take a special look and give the courts what they require to assume rights to citizens.

The Equality Rights provisions of the Charter of Rights is a foundation stone by which all laws must stand or fall. Section 15 underwent rigorous scrutiny and redrafting, and is an attempt to abolish the concept of disadvantaged minorities. It declared race, origin, religion, colour, sex, age and disability as irrelevant tests of human worth. The intent and purpose of Section 15 is clear, but we have seen the best intentioned measures fall short - we should not rest easy until we see the intent and purpose reflected in the judgements of the highest courts. Even if the courts do respond, it doesn't end our quest for true equality.

In order that every Canadian has a new sense of tolerance, we need to

lift the words off the parchment and make them a reality in our lives - turn words into a living mindset and attitude for people to be secure and live lives of dignity. We need to embrace the spirit of humanity which holy men have urged on us since the dawn of civilization. The alternative is merely to hide resentment and meanness of spirit, not bury them. We need to do more than accept those who are different because we fear the wrath of justice, we need to embrace each individual as a member of the family of mankind, as in the spirit of Brother Desmond Tutu and Mother Theresa.

Mr. Chretien called upon participants to be vigilant, not to let joy turn into complacency - to watch the progress of Charter decisions before the courts - if loopholes are found, inadequacies met, to raise our voices and demand constitutional amendments.

It is natural for politicians to resist such a process. But if there is a better way to express what's intended in the Charter, there may well be a need to return to the constitution table. We need to steer judges to the inescapable conclusion that equality must be seen in the broadest sense, that we need to err on the side of tolerance, humanity and goodwill.

When in doubt whether groups are included or excluded, don't let judges split hairs over SUI GENERIS rules or throwbacks to medieval jurisprudence; but call upon the judiciary to open their hearts, and help to mold the Canadian way of life as a model of compassion and guarantee of dignity for all Canadians. He called for Canadians to endure sacrifices and adjustments to make equality a fact of life, not a sentiment on a piece of paper.

Mr. Chretien remarked that Canadians have shown that diversity and tolerance are qualities we espouse. If there is a right thing to do - such as include provisions in the Charter for aboriginal rights and equality, Canadians will do it. In Canada we can be different, and equal, at the same time. We can accept people for what they are, and we can make our society one based on guaranteeing rights and full citizenship.

COMMENTS: MARYKA OMATSU,
MEMBER OF CONFERENCE PLANNING COMMITTEE

While Section 15 has just come into effect, we must work to breathe life into it, and to counteract forces which will try to neutralize it. We do not yet have the kind of equality rights we need in order to live productively in Canada. We need to develop some muscle in 'equality seeking' to ensure that we have equality of treatment and equality of results.

AFTERNOON PLENARY

TERRANCE HUNSLEY, EXECUTIVE DIRECTOR
CANADIAN COUNCIL ON SOCIAL DEVELOPMENT

The Canadian Council on Social Development (CCSD)has developed a strong law and social development program as part of its ongoing work. CCSD had an earlier program in the 1970's, suggested by the Donner Foundation which emphasized research and developmental action which was terminated in the mid 70's. In 1980, there was a small rebirth of activity in this area, but without major commitment of resources.

CCSD's work in law at social development has centered on two themes: where the law has a potential to direct social policy; where there is an overlap among systems.

Work has included focus on victims of crime, young offenders, crime prevention through social development, and the Constitution and Charter. Current interests involve making information data available, educational materials and strategies for people concerned with applying the Charter for social development. The concern is for three areas of application - policy and legislation; administration and program design; community activism and change. There is a concomitant concern for administrators, front line workers and policy makers to ensure that people understand the public policy role for the judiciary and how judges will interpret their responsibilities.

Mr. Hunsley mentioned that CCSD has established a Task Force on Social Development and the Constitution, now chaired by Dr. Ralph Garber, Dean of the Faculty of Social Work, University of Toronto. In looking at areas of Constitutional impact, the Task Force is concerned with

matters of professional activism, and citizen knowledge and capacity to access the legal system regarding constitution related matters.

With regard to policy, he noted concerns with present income security legislation. Benefits are linked to individuals, and vary by region for people in similar circumstances. The basis for welfare payments should be questioned under equality provisions.

Regarding program design, there are inequalities in the way programs are delivered vis a vis the way they are described in their legal foundation or policy support. For example, vocational rehabilitation programs could be challenged.

Regarding operational responsibilities in programs, there are administrative requirements but also programs are delivered via the judgements of individual workers. Case management processes can be challenged.

Mr. Hunsley gave an overview of Challenges facing human service interests regarding the use of the Charter.

Firstly, the International Bill of Rights, and Covenants on Social and Economic Rights may have some application regarding the development of social policy and the constitution. Secondly, we must consider what other forums besides litigation can effectively be used to pursue Charter objectives. Thirdly, what is the scope and form of public support from government; will governments extend support to individuals on constituted-related actions, and will it be related to individuals or groups on the basis of economic status or ancestry.
CCSD is involved in a number of discrete projects. For example, it

has carried out a small survey of voluntary organizations regarding their expectations and experience regarding the Charter; published a number of publications and booklets on the law and social development; promoted research on the basic principles underlying social policy as related to the intent and meaning of the Charter. CCSD will make submissions to the Parliamentary Committee on Equality Rights. It also is seeking via meetings with officials of the Supreme Court to secure special status for the CCSD to intervene in Charter cases where there are social policy issues.

He encouraged interested citizens and conference participants to involve themselves with the CCSD and the SPC in their work regarding human services and the Charter.

ALLAN HUTCHINSON, PROFESSOR
OSGOODE HALL LAW SCHOOL

Professor Hutchinson's topic included examination of the limits and possibilities of using the Charter for social development. He cautioned that the Charter is yet only a piece of paper, a statement of intent, and worries that celebrations regarding Section 15 coming into effect may be premature. Our hopes should be tempered by realizing how can we use enthusiasm, good will and energy to ensure that the Charter will be an instrument for justice.

We need to understand that the courts are part of the government, part of the structure of governance. The Constitution was handed down by governments, representing a deal among governments, and not the result of a popular consensus and debate. The Charter shows a kind of schizophrenic attitude we have toward the United States, we don't want

their life style but have adopted measures and features of their way of life. We surely do not want to be as litigious a society as the U.S.

It is important to recognize that litigation is only one strategy among others. Even while litigating, we should not cease our other action in the legislative area.

When you go before the courts, it is important to know what you want - in detailed terms. There are hollow victories if the courts agree with you, but don't put into place remedies which correct the situation. There are other reasons for bringing litigation - sometimes no one notices until you bring court action. But litigation should be a last resort, for two reasons: 1) the experience of the judiciary regarding human rights is not exemplary, and 2) talk is cheap, but litigation is not. We need also remember that the loser pays not only their own costs, but also the winner's costs.

Prof. Hutchinson contended that it is necessary to introduce rules to change the 'cost' rules in Charter legislation, to put procedural devices into place which don't now exist before substantive issues can be addressed. It is important to consider who pays for litigation, as the intention of present rules is to discourage litigation, which is not considered a social good. It is not a good prospect for groups to consider the need to sue governments and pay costs as well.

Assuming you want to bring litigation and have the funds, how do you get in front of the courts? Our tradition is that courts don't

adjudicate on issues - for example, should we have the right to medical care? The courts only hear cases where someone's interest is violated. Someone has to have a legal interest, e.g., if someone is run over in an accident, that person has been injured and has a legal interest. That's going to be a problem for groups, because they may not have necessarily suffered a harm but some individual in the community they're supportive of has. There are two ways at least, in which groups can get involved.

1) Courts can give 'standing' in some circumstances for groups to be primary litigant - an example is the BOROWSKY case regarding abortion laws in which he had no legal interest: it was argued that he could still challenge the abortion laws because there was no one else who could have an interest in challenging the provisions. This was a situation where somebody whose interest wasn't directly affected could bring an action before the court.

   It may be that certain groups in the human services feel that they should be given standing to bring actions as primary actors because people whose rights are being affected are not in the position to pursue litigation themselves. So groups may be able to bring actions on behalf of others. Efforts need to be made to try to broaden the 'standing provisions'; who can bring actions and challenge potentially unconstitutional action by a government?

2) Another way of getting involved in litigation which seems more realistic, is that when an action is being brought, parties may

want to intervene, become what is known as AMICUS CURIAE (or friends of the court) and given status to give arguments to the court even when they don't have a legal interest in it. In the 1970's Courts seemed to be open to greater intervention but recently there seems to be cutting back on this; courts are worried that so many different groups will overwhelm the court with arguements that it will be up to the individual themselves to make their case. So standing and intervention are important!

Another important consideration is remedies - what do you want the courts to do? Usually courts award damages where they declare a person's rights have been violated. This may be appropriate in some cases, but is not sufficient in equality cases, as it is not good enough to order payment of damages but the state of affairs which occasioned the injustice is continued. Traditionally the courts have not been keen to make positive orders requiring individuals or organizations to change the way they operate. When it has been done, it's been in discrete areas - for example ordering how you should deal with a particular person. But in the type of litigation we're dealing with, we want institutional change to change the way institutions perform. An example of this has been the school desegregation policy, but the problem is that courts have real difficulty in knowing what they should do. What the courts did in the U.S. was to get involved in supervising plans for changing the school boards. That is something the Canadian courts have not done and will not do as they will see this leads to long term involvements in change.

We need to persuade the courts that it's appropriate to do so, and to take a more active role. An example of what can happen is an action brought in Newfoundland to contest a situation where women are being put into solitary confinement because there were no other facilities available. Assume that the action was successful: what do we want the courts to do? We don't just want a declaration that this shouldn't be happening or simply to say to the particular women in whose interest the case was brought, that you won't have to go into solitary confinement; what you want is for the facilities to change - what facilities to be built -- how to reorganize the prisons. Who's going to do that? The courts in a sense have no backup mechanism. They don't have money, a fund to use to sponsor these changes. They have to have ways to oversee and supervise these changes. We need to persuade courts to do this.

If they don't do this, we may only win battles and not wars. What will it mean to hear the courts say it's wrong, if nothing more is done? When you intervene, you want to tell the court what you want in real detail, and that it's appropriate for the court to do it. It may be the responsibility of other institutions but they are failing, and the court needs to do it. Be precise, be detailed, and force the courts to make those kinds of orders.

Even with all this, be careful! Desegregation has been attempted in the U.S. for 30 years, and when you look at the actual situation you can conclude that it's not been a complete success. There are cases involving the improvement of psychiatric

facilities in Alabama, where the courts said the conditions were disgraceful and steps have to be taken to reduce the population of these facilities by half. The government responded quite easily and simply dumped half of the in-patient population into the community, without supports. This was a response by an unsympathetic government. We have to monitor what happens after court decisions. We need to be realistic, pull our efforts together. We need to get before the courts, and argue for rights to housing, medical care etc. We have to be detailed when we have an opportunity to improve our situation. He cited the example of the sergeant on Hill Street Blues who ended the role call to the police teams by saying, 'but remember be careful out there'. Don't be sidetracked to believe that the courts are the way to social justice.

Paraphrasing a famous man from another point in time: 'litigants and social activists of the world unite, you have nothing to lose but your chains, and maybe you've got a world to win'.

RESUME

Chaviva Hosek
Chairperson of the National
Action Committee on the
Status of Women

Chaviva Hosek provided a résume for the conference, which outlined the main direction of discussion during the day, as well as providing a basis for future action vis-a-vis the Charter and social development.

Three strategies for using the Charter were discussed at various points during the day: litigation, lobbying, and public education. It is important for equality seekers to be aware of how these strategies relate to each other to assure that optimum benefits are achieved from each. To this end, our strength is in working together which brings a crucial issue to the forefront of future action - that of creating a co-ordinating mechanism for the efforts of Canadians who will be striving for equality via the Charter of Rights and Freedoms. This must be the first agenda item. Therefore, a strategy must be established that goes beyond informal networking to something more organized to assure that the charter and its equality provisions actually work to increase equality in Canada.

Two tasks are necessary. One is to see how far the Charter can be stretched in a general way. For example, are access to health care or adequate housing a right in Canada? Two, and more specifically, for various communities to bring specific cases forward. This raises a debate about when litigation is appropriate. One side holds that the best case should be chosen and brought forward with the intent to win. The other side holds that large numbers of cases should be brought forward to highlight problematic areas; this puts litigation into a

form of public education.

It is important for people to have access to information that will inform them on what cases are upcoming and what groups are expanding the provisions of the Charter by other means. Duplicating efforts is not productive. A data base was suggested to help avoid such duplication. The Social Planning Council of Metropolitan Toronto and the Canadian Council on Social Development may be able to provide a co-ordinating role for efforts in Metro and nationally. An information vehicle for an ongoing system of sharing is necessary. An organizational structure is needed to see what resources we have and how we can distribute them.

Part of the collaborative work we need to do includes monitoring the strategies of those who are using the Charter to, for example, stop implementation of affirmative action or use the Charter for union busting. Defensive work must be prepared and part of that preparation must consist of the organized sharing of information about litigation, lobbying, and public education endeavours.

POSTSCRIPT

The conference met its stated objectives on a high level. It attracted over 250 participants; met its budget requirements; provided enthusiastic, energetic and informative working sessions; involved major constituent groups and organizations on Charter issues; initiated a wide network of persons interested in Charter issues; and made planned provision for post conference follow-up activities.

More than a third of the participants volunteered to engage in post

conference activity, and represent an informed and active base for collective action.

Major groups and individuals involved with the Charter have agreed that the Social Planning Council of Metropolitan Toronto should provide leadership in social development as it relates to the Charter of Rights and Freedoms.

An 'Action Network' is now being established as a Social Planning Council committee, and will engage in public education, information exchange, and some public advocacy on Charter-based human service issues.

CHARTER OF RIGHTS

CONFERENCE PROGRAM

APRIL 19, 1985

Appendix A

8:00 - 9:00 a.m.
Registration and Reception

9:00 a.m.
Opening Remarks

. Livy Visano, Chairperson
Conference Planning Committee

. Judy Jordan-Austin, President
Social Planning Council of
Metropolitan Toronto

9:15 a.m.
Plenary Session

Keynote Speaker

. David Kairys, Kairys and Rudovsky
Philadelphia, PA.
THE U.S. EXPERIENCE
- RHETORIC, ACTION AND REACTION

Commentator

. Mary Eberts
Tory, Tory, Deslauriers and Binnington

10:15 a.m.
Coffee

10:30 a.m. - 12:00 noon
THE CHARTER AND IT PROVISIONS
- DOES IT WORK FOR YOU?

. 4 working sessions

Community - Session A

- David Baker, Advocacy Resource
Centre for the Handicapped
- Kathleen Ruff, Editor,
Canadian Human Rights Advocate

Legal - Session B

- Erika Abner, Research Director,
Canadian Civil Liberties Assn.
- Charles Campbell,
Iler, Campbell and Associates
- Beth Symes, Symes, Kiteley & McIntyre
Legal Education and Action Fund (LEAF)

Service Providers - Session C

- Richard Nolan, Human Rights
Directorate, Secretary of State
Ottawa
- Richard Weiler, Program
Consultant, Canadian Council
on Social Development, Ottawa

Legal & Equality Rights - Session D

- M. Elizabeth Atcheson,
Cassels, Brock & Blackwell

- Robert J. Sharpe, Professor,
Faculty of Law, University of
Toronto

12:00 - 12:45 p.m.

Luncheon Hosted by the Provincial
Secretariat for Justice

12:45 p.m.

- Ms. Stephanie Wychowanec
Deputy Provincial Secretary
for Justice

1:00 p.m.
LUNCHEON ADDRESS

. The Honourable Jean Chretien, M.P, P.C.
Former Minister of Justice
Government of Canada

2:00 - 2:45 p.m.
Plenary Session

Speakers

. Terrance Hunsley
Executive Director of Canadian Council
on Social Development
LAW AND SOCIAL DEVELOPMENT
INITIATIVES IN CANADA

. Professor Allan Hutchinson
Osgoode Hall Law School
LIMITS AND POSSIBILITIES IN
USING THE CHARTER FOR SOCIAL
DEVELOPMENT

2:45 - 4:00 p.m.

FOCUSING ON STRATEGIES FOR USING
THE CHARTER

- 5 Working Sessions

Working Session Leaders

. Carole Geller, Former Executive Director
Saskatchewan Human Rights Commission

. Dr. Jack Layton,
Alderman, City of Toronto

. Marilou McPhedran,
Public Health Advocate, City of Toronto

. Carol Tator,
President, Urban Alliance on Race Relations

. John Wilson, Mgr. Policy Services
Applied Program Technology,
Ministry of Community and Social Services
Province of Ontario

4:15 p.m.
Resume of the Conference

DETERMINING AN AGENDA FOR
CHARTER ACTION

. Chaviva Hosek, Chairperson
National Action Committee on the
Status of Women

4:30 p.m.
Next Steps

. Dan McIntyre, Executive Director
Canadian Human Rights Commission,
Ontario Region

ACKNOWLEDGEMENTS

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For Financial Assistance:

- The Human Rights Directorate, Secretary of State, Government of Canada
- The Provincial Secretariat for Social Development
  - the Honourable Reuben Baetz, Secretary
  - Ms. Stephanie Wychowanec, Deputy Secretary
- The City of Toronto
  - Mayor Arthur Eggleton

.../

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APPENDIX C

STRATEGIES FOR COMMUNITY ACTION

prepared for: The Working Conference on the Charter of Rights and Freedoms: Implications for Human Services.

by

Robert Doyle, D.S.W.
Senior Program Director

Social Planning Council
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Toronto, Ontario M4W 3J3

It is likely that most of us at this working conference are not content with "things as they are". The Charter of Rights and Freedoms presents a challenge and an opportunity for us to be involved in cooperative efforts to promote better social justice for disadvantaged people in our society.

This short paper addresses the need for us to recognize situations where we can apply appropriate strategies. Choices about the kinds of actions we should take, with whom, and through what kind of structure, must take different situations into account.

CONTEXT FOR CHANGE STRATEGIES

In social change at the community level, there has been a breakdown of an earlier tenet that THE way to go about making change is through decisions based on consensus. There is now no single way to achieve change goals, but a 'grab bag' of different kinds of change strategies, many of them poorly defined, if not overlapping.

The values which guide choices are also being re-examined, and the question of what kinds of strategies are appropriate to what kinds of change context is important. At the level of community action the kinds of change strategy used in one context or another include consensus planning, bargaining, lobbying, protest, research-demonstration, social action, nonviolence, organization of client populations, community development, conflict, elite planning, organization of indigenous groups, civil disobedience, and others.

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ISSUES AND STRATEGIES

There are a number of ways of looking at the context for change related to strategy. For example, considering dimensions such as how our group relates to the existing power structure, or the presence and timing of our proposals. This paper looks at the degree of consensus on issues, related to types of strategies.

By strategy, we mean an orchestrated attempt to influence a person or a system in relation to some goal that we desire.

In military terms, 'strategy' is defined as "the science of forming and carrying our projects of military operations; generalship; the use of artifice or finesse in carrying out a project... refers to the operations or movements previous to a battle": 'tactics' is "the art of handling troops when in actual contact with the enemy". (Webster)

ISSUES

Three situations can be noted.

1. ISSUE CONSENSUS

We have a situation where there is:

a) basic agreement among groups as to the way an issue should be resolved, or

b) the likelihood of reaching such basic agreement once we fully consider the issue.

Issue consensus can arise from common interests arising out of common values, but there is also a basis for issue consensus where interests come together even though values differ (e.g., politics makes strange bedfellows).

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2. ISSUE DIFFERENCE

This refers to a situation where there is a 'live' possibility' that consensus on issues can eventually be reached, but where there is, as yet, no agreement that:

a) the problems we recognize are not yet seen by others, or

b) there is disagreement on what to do about the issue.

We may want to attract attention to a situation and develop it into an issue, but this is not yet done. In the other case, the situation is already an issue, i.e., the subject of active consideration by the parties invoved, but there is disagreement among some of the parties to the situation on proposals to change the situation. The chief obstacle may be opposition, but the change agent has a belief that, through persuasion, opponents will be convinced that the proposal conforms to their true values or interests.

3. ISSUE DISSENSUS

In this situation, important parties to the situation either:

a) refuse to recognize the issue, or

b) oppose our proposals.

From our viewpoint, there is little likelihood through explicit statement or discussion, of developing the situation into an issue. It is already an issue, there is little chance of changing the value or interest orientation of the parties to achieve 'issue consensus'.

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STRATEGIES

These three types of situations lend themselves to three types of strategies - collaborative, campaign and contest.

1) COLLABORATIVE STRATEGIES

Collaborative strategies are based on the assumption of a common basis of values and interests, through which a substantive agreement on proposals is very likely. Our predominant role (as change agent) is that of enabler or catalyst, not concerned with putting through a preconceived proposal, but helping pertinent groups reach consensus on the issue.

Differences are assumed to be based on misinformation or poor communication. Action calls for 'getting the facts', clearing up misunderstandings based on faulty or incomplete information, and reconciling different points of view. The chief obstacle is not opposition, but (if anything) apathy and inaction.

The collaborative strategy is appropriate where there is issue consensus. Where it is lacking, it becomes less relevant. Nevertheless, the attempt to apply collaborative strategies in situations where they don't apply still persists.

2) CAMPAIGN STRATEGIES

In situations of issue difference, you as change agents have a position which is not shared - a point of view that a particular condition is important, and others have to see it that way - or a need to persuade different-minded people that your proposal should be adopted.

The predominant role of the change agent is a persuader.

The persuasive effort may use mass media 'educational campaigns', letters, the use of testimonials, endorsements by prestige

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figures, organization of ad hoc groups to direct attention to the issue or promote your proposal, getting existing groups mobilized, individual persuasion, lobbying. These strategies may be called 'campaigns', since they try to reach agreement to a proposal even among differences, by 'winning over' the other partner through persuasion.

The campaign strategies also bring various forms of 'pressure' to bear on people to 'go along with' the proposal, and perhaps to support it actively even though they are not convinced of the merits of the case. As pressure techniques pass a certain threshold, they merge into contest strategies.

The campaign strategies attempt to accomplish consensus where the chief obstacle is either apathy or opposition. Out of apathy, they attempt to create interest. Out of opposition, they attempt to create agreement. They are, therefore, quite different from collaborative strategies which attempt, through discussion, or voting, or polls, or whatever technique, to create proposals based on concensus.

3) CONTEST STRATEGIES

Where there is issue dissensus, you must pursue your own goal in opposition to others, if it is to be pursued at all. Various types of activity, such as tennant protests, sit-ins, strikes, demonstrations, boycotts are examples of contest strategies.

They are characterized, temporarily at least by laying aside efforts to reach consensus and the use of efforts to further one's own side of the issue despite opposition from important partners to that issue.

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The predominant role of the change agent is one of contestant.

'Contest' is used rather than 'conflict' which is often used for processes where deliberate harmful activity is directed toward an opposing party. It is important to note that not all value-interest disagreements lead to issue contests. An issue doesn't become an issue because someone says it is; an issue is produced only when the battle is joined.

There may be different types of contests. For example:

i) many contests involve clashes of opposing positions, but these take place WITHIN ACCEPTED SOCIAL NORMS for the confrontation of differing views and the resolution of issues, e.g., legislative debates, legal disputes, efforts to 'win over' the public on some specific decision-making group to favour your position rather than the opponents one.

ii) some contests are attempts to CHANGE THE DISTRIBUTION OF POWER in the community, and naturally arouse opposition from those whose power position is threatened.

iii) some contests involve a VIOLATION OF THE USUAL COMMUNITY NORMS for resolving issues where no agreement is likely.

iv) some contests involve the deliberate attempt to harm or remove the opponent from the picture, i.e., <u>conflict</u>. Specific attempts to depose a particular official, to destroy a career, to bankrupt a firm, harassessment of various types, and violence, are examples of conflict strategies.

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CONCLUSION

If we have the basis for reaching a consensus, we should use collaborative and persuasive strategies to achieve such consensus. Once we have formed a consensus around the need for common action, we could use a greater range of non-violent strategies and tactics to promote social action on Charter issues.

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STRATEGIES FOR CHANGING

SITUATION	MAIN OBSTACLES	BASIS OF CHANGE STRATEGY	STRATEGIES
CONSENSUS . agreement on how issue should be resolved, or . acceptance that we are likely to reach an agreement	INACTION APATHY	PROVIDE INFORMATION RATIONALITY GET FACTS, RESEARCH COMMUNICATION	**COLLABORATION** . COMMUNICATION . RESEARCH . INFORMATION
DIFFERENCE . no agreement that the proposed change is an issue . no agreement on the substance of the issue	APATHY OPPOSITION	EDUCATE OTHER PARTIES OBTAIN SUPPORT OF PRESTIGE FIGURES e.g., ENDORSEMENTS MOBILIZE GROUPS	**CAMPAIGN** . USE MASS MEDIA . EDUCATIONAL CAMPAIGN . LETTERS . TESTIMONIALS . ENDORSEMENTS . ORGANIZE NEW GROUPS . MOBILIZE EXISTING GROUPS . INDIVIDUAL PRESSURE
DISSENSUS . one party refuses to recognize the issue . one party opposes the change proposal of the other	OPPOSITION INTERFERENCE	USE OF POWER AND INFLUENCE ATTEMPTS TO COERCE OTHER PARTIES TO RECOGNIZE ISSUE OR ACCEPT PROPOSAL	**CONTEST** . LEGISLATIVE DEBATE . LITIGATION . VIOLATE SOCIAL NORMS . NON-VIOLENT TACTICS . DEMONSTRATIONS . VIGILS. . SIT-INS . STRIKES . BOYCOTTS . HAUNTING . REVERSE STRIKES . OTHERS

APPENDIX D

CHARTER OF RIGHTS AND FREEDOMS:
IMPLICATIONS FOR HUMAN SERVICES APRIL 19, 1985

BIOGRAPHIES: CONFERENCE PLANNING COMMITTEE

ARMOUR, Monica	Consultant, TransCultural Consultant Services, works with ethno-cultural organizations, agencies that serve the needs and interest of diverse populations, native Canadians, and Third World people who are in Canada to develop their skills. Board member, Urban Alliance on Race Relations, Community Forum on Shared Responsibility and the Social Planning Council.
BAKER, David	Graduate of University of Toronto law school. Spent a period of time working with Ralph Nader in Washington in 1978. Upon returning to Toronto, began work to establish the Advocacy Resource Centre for the Handicapped (ARCH) which opened in 1980. He is currently the Executive Director of ARCH.
BRUCE, Mary	Director, Equal Opportunity Division, University of Toronto. Formerly, manager of the Affirmative Action Program for the Ontario Ministry of Agriculture and Food. Staff, Mayor's Committee on Community and Race Relations. Member, Advisory Committee, Women Into Management, Confederation College, Thunder Bay. President, Barbara Schlifer Commemorative Clinic.
DOYLE, Robert	Senior Program Director, Social Planning Council of Metropolitan Toronto. Holds D.S.W. (University of Toronto). Past experience includes Co-ordinator of Neighbourhood Services, City of Toronto; Executive Director of Program Development, Department of Social Services in New Brunswick· consultant, Del Support Centre; taught at Universities-Dalhousie, Manitoba and New South Wales (Australia). Conference Co-ordinator.
GRIST, Lin	Director of Community Centre 55 in the east end of Toronto. Chairman of Opportunity for Advancement, an agency working primarily with low income single mothers. Board member of SPC, special interest in women's issues and housing.

HARDING, John	Specialist degree in Anthropology and B.A. in Education from the University of Toronto. Since 1981, Vocational Rehabilitation Instructor at the Metropolitan Toronto Association for the Mentally Retarded. Recently accepted into the Master's program in Social Work at the University of Toronto.
HUTCHINSON, Allan	Professor, Osgoode Hall Law School. Teaches civil procedure, torts, and legal theory. Graduate of law school at the University of London and Manchester. Published in leading legal journals in the U.S., Canada and England. Frequent contributor to the Toronto Globe and Mail.
LEATCH, Joanne	Policy analyst, Children Legislation Unit, Policy Development, Ministry of Community and Social Services. B.A. Honours English, University of Toronto. LL.B. Osgoode Hall Law School. Called to the bar in 1978. Formerly, staff lawyer, Parkdale Community Legal Services, responsible for family and welfare law.
McINTYRE, Dan	Executive Director, Ontario Region, Canadian Human Rights Commission. Extensive experience in human rights field. M.S.W. Dalhousie University. Member, Board of Directors, Social Planning Council of Metropolitan Toronto. Executive board member, Afro-Canadian Congress.
OMATSU, Maryka	Consultant on Affirmative Action, Employment and Imigration Canada. Formerly investigator and acting Ontario Region Director, Canadian Human Rights Commission. Holds LL.B and Masters degree in Sociology. Involved in race relations and legal counsel for the Japanese Redress Committee.
VISANO, Livy	Conference chair. Member of the Social Planning Council's Board of Directors, and chair of the Family and Community Services Committee. Professor, Department of Sociology, York University. Resource to the Mayors Committee on Community and Race Relations. Fellow, Centre of Criminology, University of Toronto. Advisory Board, Italian Canadian Benevolent Corporation.